

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARY-LYNNE FISHER et al.,

Plaintiffs and Respondents,

v.

MARK V. SANTA ROMANA,

Defendant and Appellant.

B216596

(Los Angeles County
Super. Ct. No. GC040371)

APPEAL from an order the Superior Court of Los Angeles County. Edward Simpson, Judge. Affirmed.

Mark V. Santa Romana, in pro. per.; and Patrick J. Manshardt for Defendant and Appellant.

Law Office of Marilyn M. Smith and Marilyn M. Smith for Plaintiffs and Respondents.

* * * * *

In this attorney fee collection case, appellant Mark V. Santa Romana appeals from the trial court's postjudgment order awarding attorney fees to his former attorney, respondent Mary-Lynne Fisher, who represented him in his marital dissolution proceeding. Appellant contends that the court erred in granting respondent's motion for fees because respondent's counsel of record in the collection action previously provided legal services to appellant in the underlying dissolution case, and therefore a conflict of interest existed. We find appellant's contention to be without merit and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Both parties are attorneys and prepared their own appendices in this appeal. Nevertheless, the record before us is incomplete. No copy of the operative complaint is included though, it appears to be undisputed that appellant retained respondent to represent him in a marital dissolution action which resulted in a judgment favorable to appellant. Appellant's retainer agreement with respondent obligated him to pay attorney fees to her, and specified that respondent could use the services of a contract attorney. In connection with her representation of appellant in the dissolution proceedings, respondent used the services of contract attorney Marilyn M. Smith, who provided consultation services to respondent for which she billed a total of 1.7 hours of work. None of Smith's services involved any direct contact with appellant.

Appellant paid some attorney fees, then stopped paying after November 2006. In February 2008, respondent filed suit against appellant for her unpaid fees, and Smith acted as respondent's attorney of record. Trial was set for December 15, 2008. About a week prior to trial, appellant filed a motion in limine to preclude any evidence of Smith's fees on the ground that she had a conflict of interest with appellant in light of her having previously provided legal services on his behalf. At the same time, appellant also filed an ex parte application for an order shortening time to set a hearing on a motion to disqualify Smith as respondent's counsel in the collection action, again based on her alleged conflict of interest in having provided legal services to appellant in the underlying dissolution action.

Though respondent states in her appellate brief that the trial court denied the motions, there is no reporter's transcript of any hearing on the matter. There is only a copy of a judgment filed on December 31, 2008, awarding respondent \$45,004.06 in unpaid fees, following a bench trial. After the judgment was entered, in February 2009, respondent filed a motion to collect her fees and costs incurred in enforcing the retainer agreement, seeking approximately \$30,000. Appellant opposed the motion on the ground that Smith should have been disqualified. Following a hearing on the matter, on March 26, 2009, the court granted the motion for fees, but reduced the award to \$7,500. Appellant filed a notice of appeal on May 22, 2009 from the March 26, 2009 postjudgment attorney fee order.

DISCUSSION

Appellant contends that the trial court erred in granting respondent's motion for attorney fees because Smith should have been disqualified from representing respondent in her collection action after Smith had provided legal services to appellant in his underlying divorce proceedings.

As an initial matter, respondent contends that appellant's appeal is untimely and must be dismissed because the issue of disqualification was determined by the court in the judgment entered December 31, 2008, and respondent never appealed from that judgment. But the record here does not support respondent's contention. We note that in its written March 26, 2009 order granting respondent's motion for attorney fees, the court specifically stated that appellant's ex parte application "was denied, not on its merits but for the lack of a showing of exigent circumstances." The order makes no mention of the motion in limine, which was based on the same ground as the ex parte application. Because there is nothing in the record before us to show that the trial court ever ruled on the motion in limine, we cannot conclude that the issue of disqualification was finally determined by the December 31, 2008 judgment.

But even addressing the merits of appellant's appeal, we find no basis for reversal. Appellant relies on California Rules of Professional Conduct, rule 3-310(E), which

provides that “A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.” Appellant points out that he never gave his written consent. But rule 3-310 is not applicable here.

First, appellant points to no place in the record establishing that confidential information was actually given to Smith in connection with his underlying dissolution case or that the two cases are even substantially related. Smith declared that she never had any direct contact with appellant. To the extent a reasonable inference could be made that confidential information was disclosed to Smith, “California authorities have consistently concluded that disqualification is inappropriate for mere exposure to information by an attorney to confidential information.” (*Neal v. Health Net, Inc.* (2002) 100 Cal.App.4th 831, 843; see also *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 304.) “[A] party cannot improperly disclose confidential information to one’s own counsel in the prosecution of *one’s own lawsuit*. To do otherwise (i.e., barring discussions of an adversary’s confidences known to the client), would defeat the purpose of confidentiality, which is to promote full and open discussions between attorney and client.” (*Neal v. Health Net, Inc., supra*, at pp. 843–844 [italics added].) Taken to its extreme, appellant’s position would mean that no attorney could even represent herself in her own action to collect unpaid fees against a former client. There is no authority for such a result.

Because we find no merit to appellant’s contention, and because he does not challenge the court’s order granting attorney fees on any other ground (such as the amount of fees or the contractual right to fees), there is no basis for reversal of the court’s order.

DISPOSITION

The order granting the motion for attorney fees is affirmed. Respondent is entitled to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ